IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14322 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KAMLESHBHAI GOKULBHAI PATEL - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR MEHUL H RATHOD for Petitioner(s) : 1,
Ms. Archana Raval, Asstt.GOVERNMENT PLEADER for Respondent(s) :1 - 2.
DS AFF.NOT FILED (R) for Respondent(s) : 1 - 2.
RULE SERVED BY DS for Respondent(s) : 3,
MR.JRUGESH N JOSHI for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 11/08/2006

ORAL JUDGMENT

1. Even as the present petition under Article 226 of the Constitution was moved in October, 2004 and

after several hearing admitted on 5.11.2004, and interim relief directing to keep one post vacant was granted, the respondents have chosen not to file any affidavit-in-reply. Therefore, the facts stated in the petition have to be taken as not controverted.

2. The petitioner had applied for the post of Vidyasahayak on the basis of Diploma Certificate for having successfully passed the final examination in “Art Teacher”. After the selection process by the respondent no.2, the name of the petitioner appeared in the list of selected candidates, in the select list of reserved quota of handicapped candidates at Sr.No. 4. Thereafter the petitioner was required to submit a certificate to the effect that the institution from which he had done his ATD course was recognised by the National Council for Teachers' Education (NCTE), Bhopal. The institution where the petitioner had undertaken the ATD course, joined herein as respondent no.3, had written to the respondent no.2 vide letter dated 13.10.2004 that the institution had applied for recognition by NCTE since 21.4.1998 but none of the 16 such institutions in

Gujarat were given the recognition. In the meantime some of the candidates selected along with the petitioner had approached this Court by way of Special Civil Application No.10509 of 2002 wherein this Court (Coram: Hon'ble Mr Justice P B Majmudar) had directed to process the applications of the petitioners therein on merits on the basis that there was deemed recognition for the institutions which had applied for recognition by the NCTE. Accordingly the other candidates selected in the same selection process were appointed as Vidyasahayak subject to the conditions mentioned in their appointment orders and, in fact the education department of the State Government had issued a letter dated 13.01.2004 to issue appointment orders to such candidates, according to the petitioner. Since the petitioner was deprived of the benefit of the aforesaid order of this Court and the aforesaid letter of the education department, the petitioner had made several representations and has ultimately approached this Court for a direction to the respondent to issue appointment order to the petitioner.

3. Without putting any facts on record or on affidavit, it was submitted for the respondent that subsequent to the selection process in question, the petitioner had again appeared in the subsequent selection process where he had failed, and as he had taken away his original testimonials, he could not be considered for the appointment. These allegations, even assuming them to be true, are wholly irrelevant for deciding the issue of legality or otherwise of denial of appointment to the petitioner. In view of the above undisputed facts, the petitioner could have been and ought to have been appointed in the year 2004 pursuant to the acceptance and implementation of the order dated 24.9.2003 of this Court in Special Civil Application No.10509 of 2002 and instruction dated 13.1.2004 of the Government. Therefore, it appears that the inaction of the respondent in not appointing the petitioner even pursuant to the letter dated 13.01.2004 of the State Government was arbitrary and illegal. It however, does not mean that the petitioner would be in a better position than the other selected candidates who were appointed.

4. In the facts and for the reasons briefly stated and discussed hereinabove, the petition is allowed with the direction that the petitioner shall be appointed as Vidyasahayak by the respondent no.4 at par with the other selected candidates who were appointed in the year 2004 pursuant to the selection and interview held in the year 2002. However, the petitioner has not claimed and shall not be entitled to any amount by way of backwages. But for all other purposes, his service shall be counted from the first date on which the other candidates selected with him were appointed. This order shall be implemented within a period of three weeks from the date of receipt of a copy of this order.

Rule is made absolute accordingly with no order as to costs.

[D. H. Waghela, J.]

msp